IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 4TH OCTOBER 2006 / 12TH ASWINA 1928

CRL.A.No. 1079 of 2002()

CC.668/1999 of JUDL. MAGISTRATE OF FIRST CLASS COURT-II, THRISSUR

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APPELLANT: COMPLAINANT

JOSE C.GEORGE, S/O. GEORGE,
THEKANATH CHERPUKARAN HOUSE, MISSION QUARTERS,
TRICHUR.

BY ADV. SRI.BABY P. ANTONY

RESPONDENTS: ACCUSED/RESPONDENT

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1. RAMANKUTTY, S/O. SANKARAN NAMBIDI,
KUNDILMADAN HOUSE, VADAKUMPURAM DESOM,
ARIMBOOR P.O., PARKAD VILLAGE, TRICHUR.

2. STATE OF KERALA, REP.BY THE P.P.,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.P.VIJAYA BHANU
SMT.K.S.CHANDRIKA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 04 / 10 / 2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. HEMA, J.

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Crl. Appeal No.1079 of 2002

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Dated this 4th day of October, 2006.

JUDGMENT

According to complainant-appellant, the first respondent-accused requested him to advance Rs.90,000/- as loan and he advanced the said sum on 28.1.1999. When demands were made to return the amount, the accused went to the house of the complainant and issued a cheque dated 13.3.1999 for Rs.90,000/-. The cheque was presented to the bank and it was returned with the endorsement that the account was closed and that there was no sufficient fund to honour the cheque. A notice was issued through a lawyer, but reply was sent raising untenable contentions. According to complainant, he was made to believe that there is fund in the account, when the cheque was given. But the account was closed much prior to that and thereby the accused committed offence under section 420 of the IPC.

2. To prove the prosecution case, PW1 to PW5 were examined and Exts.P1 to P10 were marked. The accused did not adduce any evidence. The court below found that there is no evidence to show that the accused was aware of the closure of the accounts and hence no offence of cheating is made out. The said finding is challenged in

this appeal.

3. PW1 is the complainant. He gave evidence consistent with the allegations made in the complaint. PW2 is his brother, who witnessed the transaction. PWs 3 to 5 are the officials of the bank. The definite case of the complainant is that the accused deliberately issued the cheque Ext.P1 with intention to cheat the complainant, though he was aware of the fact that the account was closed much prior to the issuance of the cheque. PW5, the bank Manager was examined to prove that the account was closed. PW5 deposed that the account was closed much prior to the reaching of Ext.P1 for collection in the bank. The account was closed as early as on 3.4.1996. Ext.P10 copy of the extract of cheque return register was also proved through him.

4. PW5 deposed that even if the loan amount is deposited, it will not be possible for the account holder to operate the account because the account was closed in a peculiar circumstance when the bank filed a suit against the account holder. To a court question, PW5 deposed that the accused was not intimated about the closure of the account. He also added that he has to verify the records, but no records are produced thereafter, to confirm whether the accused was informed of the closure. On the basis of the above evidence, the court

found that the accused was not aware of the closure of the account at the time of issuance of the cheque and therefore, it cannot be said that the accused had deliberately issued a cheque to the complainant knowing that the account in which it was drawn was closed.

5. I do not find any reason to interfere with the above finding because it cannot be said to be perverse. It is also clear from the definition of cheating under section 415 of IPC, an offence under section 420 will not lie, since on the facts of this case the ingredients of section 415 are not made out by the accused in this case. Evidence is lacking to prove deception at the inception of the transaction. PW1 has no case that he was induced by the accused by deceiving him to pay the amount. It was a normal transaction. In such circumstances, no offence under section 420 IPC is made out. The order of acquittal does not call for any interference.

This appeal is dismissed.

K. HEMA, JUDGE.

Krs.

K. HEMA, J.

Crl.A. 1079/2002

Judgment

4.10.2006

Krs.